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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA – RENO DIVISION

UTHERVERSE, INC., a Nevada corporation,
 BRIAN SHUSTER, an individual,

Plaintiffs,

v.

BRIAN QUINN, an individual; JOSHUA
 DENNE, and individual; BLOCKCHAIN
 FUNDING, INC. a Delaware corporation;
 BLOCKCHAIN ALLIANCE LLC, a
 Wyoming Limited Liability Company;
 MASTERNODE PARTNERS, LLC, a
 Wyoming Limited Liability Company;
 LYNNE MARTIN, an individual; NIYA
 HOLDINGS, LLC, a Nevada limited liability
 company; NIMA MOMAYEZ, an individual;
 and JEREMY ROMA, an individual,

Defendants.

AND RELATED COUNTERCLAIM.

Case No. 3:25-cv-00020-MMD-CSD

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION TO DISMISS AMENDED
 COUNTERCLAIM**

ORAL ARGUMENT REQUESTED

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This is an action for violation of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961 et seq.), fraud in the inducement, intentional misrepresentation, and related causes of action. Defendants Brian Quinn (“Quinn”) and Joshua Denne (“Denne”), with the full knowledge and participation of the other Defendants, concocted an elaborate and premeditated scheme to defraud Plaintiffs Uthervse Inc. (“UI”) and Brian Shuster (“Shuster”), embezzle and extort money from them and others, and eventually bankrupt UI and Uthervse Digital, Inc. (“UDI”) to cover up their scheme. The scheme targeted UI, UDI, and Shuster because of their involvement in virtual world environments and cryptocurrency, and their vulnerability resulting from the need for cash for development of the virtual world environments.

Quinn and Denne convinced Shuster they were trustworthy, could infuse millions of dollars of investments into UI and UDI for virtual world development, and could assist in the launching of a cryptocurrency for trading and use in those virtual worlds. In furtherance of the scheme, Quinn and Denne sold stock in UI that they had no right to sell, presold “UTHER” cryptocurrency tokens under falsified Simple Agreements for Future Tokens (“SAFTs”) and pocketed the money from the sales. They also convinced Shuster to enter into a variety of loans and agreements that were ultimately determinantal to UI and UDI, based on false statements, among numerous other misdeeds and violations of the law.

Counter-Defendants, Shuster, UI, UDI, Peter Gantner (“Gantner”), Nexus Venture LLC (“Nexus”), Ari Good (“Good”) and Gary Shuster (“Gary”; collectively “Moving Parties”) respectfully move to dismiss in its entirety the Amended Counterclaim (“ACC”; Doc. 48). The ACC asserts nine causes of action sounding in fraud, breach of fiduciary duty, aiding and abetting, civil conspiracy, and various breach of contract claims. As set forth below, each claim is fatally deficient under the Federal Rules of Civil Procedure (“FRCP”) and applicable law. The fraud-based allegations fail to satisfy the specificity requirement of FRCP 9(b) and amount to nothing more than “unadorned, the-defendant-unlawfully-harmed-me accusation[s]” forbidden by the Supreme Court. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The fiduciary duty and related aiding/conspiracy

claims are improperly brought as direct claims despite alleging only harm to the corporation – a classic derivative scenario requiring compliance with FRCP Rule 23.1. The contract-based claims fare no better: Counterclaimants do not plead the basic elements of breach or damages with plausibility.

Moreover, the ACC violates basic pleading rules by impermissibly lumping together multiple defendants and multiple claims in a confusing “shotgun” manner that fails to give fair notice of who is alleged to have done what, and which of the scattered and disordered allegations underlie which causes of action. For these reasons, and as detailed further below, the ACC should be dismissed. Moving Parties respectfully request dismissal with prejudice, as the pleading’s fundamental flaws – legal and factual – cannot be cured by further amendment.

PROCEDURAL HISTORY

On January 10, 2025, Shuster and UI filed their Complaint (Doc. 1). On February 28, 2025, Defendants, except Jeremy Roma (“Roma”)¹, answered and, except for Defendant Lynne Martin (Martin’), counterclaimed (Doc. 30). On April 27, 2025, Defendants (including Roma) filed an amended answer, and except for Martin and Roma, filed the ACC at issue here. The ACC names UDI, Uthervse International Ltd., (“UI Ltd.”), Gantner, Nexus, Good, and Gary as Counter-Defendants, in addition to Plaintiffs UI and Shuster. (*See* Doc 48.).

DISCUSSION

The Amended Counterclaim attempts to set forth nine causes of action: (1) Fraud (against Shuster, UI and UDI); (2) Breach of Fiduciary Duty (against Shuster); (3) Aiding and Abetting Breach of Fiduciary Duty (against Good, Gantner, Nexus and Gary); (4) Civil Conspiracy (against Shuster, UI, UDI, Good, Gantner, Nexus, and Gary); (5) Breach of the NIYA Note (against Shuster and UDI); (6) Breach of the Blockchain Funding SAFT (against Shuster and UI Ltd.); (7) Breach of the Masternode SAFT (against Shuster and UI Ltd.); (8) Breach of the Blockchain Funding Note (against Shuster and UDI); and (9) Breach of an Exit Agreement (against Shuster, UI and UDI).

However, as detailed below and pursuant to FRCP 12(b)(6), each cause of action fails to

¹ Roma was originally not represented by counsel, and default was entered against him (Doc. 37). Subsequently, Roma engaged the other defendants’ counsel to represent him as well, and the parties stipulated to set aside the default (Doc. 44). On April 10, 2025, default was set aside (Doc. 45).

1 state the necessary factual allegations to support a claim for relief.

2 **A. Legal Standards Governing Rule 12(b)(6) Motions**

3 Pursuant to the FRCP, a complaint may be dismissed because of the plaintiff's "failure to
4 state a claim upon which relief can be granted." FRCP 12(b)(6). A dismissal under Rule 12(b)(6)
5 may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged
6 under a cognizable legal theory. *See Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065 (9th Cir. 2015).
7 All well-pleaded allegations of material fact are taken as true and construed in the light most
8 favorable to the non-moving party. *Kwan v. SanMedica, Int'l*, 854 F.3d 1088, 1096 (9th Cir. 2017).
9 The Federal Rules of Civil Procedure "govern[] the pleading standard 'in all civil actions and
10 proceedings in the United States district courts.'" *Iqbal* at 684.

11 A court need not accept as true "allegations that are merely conclusory, unwarranted
12 deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055
13 (9th Cir. 2008). Nor must a court "assume the truth of legal conclusions merely because they are
14 cast in the form of factual allegations." *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
15 1981); *see also Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011).

16 The Ninth Circuit is guided by the following principles for Rule 12(b)(6) motions: (1) to be
17 entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply
18 recite the elements of a cause of action, but must contain sufficient allegations of underlying facts
19 to give fair notice and to enable the opposing party to defend itself effectively; and (2) the factual
20 allegations that are taken as true must plausibly suggest entitlement to relief, such that it is not
21 unfair to require the opposing party to be subjected to the expense of discovery and continued
22 litigation. *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014).

23 As detail below, the Counterclaim fails in these basic principles such that Moving Parties
24 should not be subjected to the expense of continued litigation.

25 **B. All Causes of Action in the ACC Comprise Impermissible "Shotgun Pleading"**

26 FRCP Rules 8 and 10(b) prohibit "shotgun pleading" where all allegations are based on an
27 unidentified subset of all pleaded facts all of which are incorporated by reference and made by some
28 or all parties without clarity. "Pleadings that seek to overwhelm defendants with an unclear mass

1 of allegations and make it difficult to impossible for the defendants to make informed responses to
 2 the plaintiff's allegations are considered 'shotgun' pleadings." *A.B. v. Hilton Worldwide Holdings*
 3 *Inc.*, 484 F.Supp.3d 921, 943 (D. Or. 2020). "Another type of 'shotgun' pleading is a complaint that
 4 asserts claims against multiple defendants without specifying which of the defendants are
 5 responsible for which acts or omissions." *Id* [internal punctuation omitted]. "Finally, a complaint
 6 may constitute impermissible 'shotgun' pleading if it fails to connect its factual allegations to the
 7 elements comprising plaintiff's claims such that it denies the parties adequate notice of the
 8 allegations supporting each cause of action." *Id*.

9 Courts have "found impermissible shotgun pleadings present in complaints alleging
 10 'everyone did everything' because such allegations prevent defendants from understanding the
 11 nature of the claims asserted against each of them." *Shumlich v. U.S. Bank, N.A.*, No. 2:24-CV-
 12 01681-MJP, 2025 WL 19871, at *2 (W.D. Wash., Jan. 2, 2025), citing *Destfino v. Reiswig*, 630
 13 F.3d 952, 958 (9th Cir. 2011) ["The district court made clear in this order that plaintiffs must amend
 14 their 'shotgun pleading' to state clearly how each and every defendant is alleged to have violated
 15 plaintiffs' legal rights. The second amended complaint was properly dismissed because it failed to
 16 do this, continuing to make 'everyone did everything' allegations." (internal punctuation
 17 removed)]. Indeed, a complaint that "generally realleges all the preceding allegations, regardless
 18 of whether those allegations conflict with the claim for relief", or "whether the facts alleged support
 19 such an allegation", "raises questions about whether ... counsel has violated Federal Rule of Civil
 20 Procedure 11". *Mason v. County of Orange* 251 F.R.D. 562, 563 (C.D. Cal. 2008).

21 The Counterclaim is textbook shotgun pleading. Every cause of action begins with
 22 "Counterclaimants repeat and re-allege each and every allegation of this Amended Counterclaim
 23 and by reference incorporate the same as though fully set forth at length herein." *See e.g.*, ACC ¶
 24 73. No effort is made to identify which of the countless alleged facts are relied on. It should not be
 25 the burden of counter defendants responding to the last cause of action to parse every one of the
 26 142 paragraphs incorporated by reference to try to figure out which allegations support the claims
 27 made. For example, while paragraph 149 alleges that "Quinn and Denne performed their obligations
 28 under the Exit Agreement", the Ninth Cause of Action is brought by all Counterclaimants such that

1 Moving Parties must parse the entirety of the ACC to discern whether there is support for a claim
 2 that others of the Counterclaimants (a) were party to the alleged Exit Agreement, and (b) if so,
 3 whether they performed their obligations.

4 While called “shotgun” pleading by the myriad of cases disapproving such practices, it is
 5 just as much a due process concern. It is impossible to rebut allegations that are internally
 6 inconsistent, often irrelevant (*e.g.*, allegations about stock registration seem unlikely to be relevant
 7 to a breach of contract claim on a promissory note, yet Moving Parties are forced to determine
 8 whether Counterclaimants are somehow attempting to recover on that basis, as those allegations are
 9 incorporated by reference), and simply hidden amongst countless and contradictory allegations.

10 The Court should find this shotgun pleading improper under FRCP 8 and 10(b), and on that
 11 basis dismiss the ACC.

12 **C. Allegations of Fraud, Even if Not Necessary Elements of a Claim, Must be Pleaded**
 13 **With Specificity**

14 Under FRCP Rule 9(b), fraud must be pleaded with specificity. Rule 9(b) provides that in
 15 “alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud
 16 or mistake.” Under this rule, “[a]verments of fraud must be accompanied by the who, what, when,
 17 where, and how of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106
 18 (9th Cir. 2003) (internal punctuation omitted), *Pinel v. Aurora Loan Servs., LLC*, 814 F.Supp.2d
 19 930, 941 (N.D. Cal. 2011), *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009). In
 20 addition, the “plaintiff must set forth what is false or misleading about a statement, and why it is
 21 false.” *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010). General or conclusory
 22 allegations are insufficient to meet this standard.

23 Further, in *Swartz v. KPMG LLP*, the court clarified that allegations of fraud must include
 24 “an account of the time, place, and specific content of the false representations as well as the
 25 identities of the parties to the misrepresentations” *Swatz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir.
 26 2007). One of the purposes of Rule 9(b) is to protect defendants from baseless accusations of fraud,
 27 which can harm their reputation and goodwill. *Kearns v. Ford Motor, Co.* at 1125. This rule ensures
 28 that defendants are fully informed of the specific allegations against them, allowing them to prepare

1 an adequate defense.

2 Indeed, any allegations of fraud – whether a necessary element of a claim or not – must be
 3 stated with particularity. *Vess v. Ciba-Geigy Corp. USA*, at 1103 ("Vess is correct that fraud is not
 4 an essential element of the California statutes on which he relies... [b]ut he is not correct in
 5 concluding that his averments of fraud therefore escape the requirements of the rule."). Thus, claims
 6 arising from “allegations of a unified fraudulent course of conduct” such that the claims may be
 7 said to be “grounded in fraud,” even if that claim does not seek recovery specific to fraud, must
 8 also be pleaded with specificity. *Id.* at 1106.

9 **D. The First Cause of Action Fails Because Fraud is Not Pleaded With Particularity**

10 As described above, under FRCP 9(b), fraud must be pleaded with specificity. The first
 11 cause of action for fraud reads like a copy-and-paste from a book on pleading requirements, devoid
 12 of any substance. See ACC ¶¶ 73-84. The first cause of action alleges that Shuster, UI and UDI
 13 “represented to Counterclaimants that specific facts concerning Utherville and Shuster were true”,
 14 the representations were false, were known to be false when made, were made recklessly without
 15 regard for truth, and Shuster, UI and UDI intended that Counterclaimants rely on the representations
 16 and Counterclaimants did so. *Id.* ¶¶ 74-79.

17 Even ignoring the violation of the prohibition on shotgun pleading, a review of earlier
 18 portions of the ACC to determine which facts were allegedly false, leads to uncertainty. The General
 19 Background section of the ACC contains a list of alleged representations by Brian Shuster, yet that
 20 list is not alleged to be false. *See* ACC ¶ 34. Other representations *are* alleged to be false (*see e.g.*,
 21 ACC ¶ 33, stating “Shuster claimed numerous past successes, millions of active Utherville users,
 22 billions in transactions on the Utherville platform, and a robust patent portfolio, among numerous
 23 other representations that were later learned to be false.” Yet other allegations of fraud are made on
 24 information and belief. *See e.g.*, ACC ¶ 36, stating, “on information and belief, Counterclaimants
 25 allege that Shuster never intended to honor the Niya Note or repay the funds, but always intended
 26 to defraud and steal the money”. We need not resolve the question of which representations out of
 27 the universe of representations included in the ACC are alleged to be false to determine that the
 28 pleading standard of Rule 9(b) is not met because the entirety of the claim rises and falls with

paragraph 74. That paragraph alleges that “Shuster ... represented to Counterclaimants that specific facts concerning Utherville and Shuster were true, as alleged herein,” and the “specific facts” are not identified. As allegations of fraud require specificity, this is even less permissible than attaching a newspaper to a libel complaint and claiming that “somewhere in this newspaper Defendant made a libelous statement of some kind.”

Regardless, even if the ACC does identify some representations made by Shuster as false, the ACC fails because it is void of any indication of when, where and to whom the representations were made. *See Vess v. Ciba-Geigy Corp. US* at 1106; *Swatz v. KPMG LLP* at 764. Nor does the ACC set forth what is false or misleading about the representations, and why it is false or misleading, as required under the specificity standard for fraud. *See Ebeid ex rel. U.S. v. Lungwitz* at 998.

Consequently, the First Cause of Action for Fraud should be dismissed with prejudice.

E. The Second Cause of Action Fails Because a Fiduciary Relationship Is Not Pleaded

Under Nevada law, a “claim for breach of fiduciary duty customarily has three elements: (1) existence of a fiduciary duty, (2) breach of the duty, and (3) damages as a result of the breach.” *Guzman v. Johnson*, 137 Nev. 126, 132 (2021).

The existence of a fiduciary relationship is *the* foundational element in any breach of fiduciary duty claim. If there is no fiduciary relationship, there can be no duty to breach. Here, the term “fiduciary” first appears in conclusory form in the Second Cause of Action for Breach of Fiduciary Duty, which states simply and without any factual basis, “Shuster was Counterclaimants’ fiduciary.” ACC ¶ 85. Additionally, the ACC states, also in a conclusory fashion, “Shuster acted on Counterclaimants’ behalf for the purpose of obtaining their investments in Utherville.” ACC ¶ 86. It is theoretically possible that Counterclaimants may cobble together bits and pieces of allegations made elsewhere in the ACC to find factual allegations that may support the existence of a fiduciary duty, but the prohibition on shotgun pleading is expressly intended to avoid forcing a party answering a complaint from having to scour page after page to locate allegations that could plausibly support a claim. Litigation is not a hide-the-claims game, nor is it an invitation to drive up costs by forcing an answering party to pay lawyers to engage in a game of hide and seek.

1 Remarkably, Counterclaimants also fail to allege a breach of fiduciary duty. They simply
 2 allege that “Shuster failed to act as a reasonably careful person would have acted under the same or
 3 similar circumstances.” ACC ¶ 87. These hollow, perfunctory allegations make it difficult to know
 4 to whom the fiduciary duty was alleged to be owed, but the overall “vibe” of the counterclaims is
 5 that Shuster is alleged to have caused harm to Counterclaimants by breaching a fiduciary duty to
 6 UI and UDI (though none is directly alleged) -- entities in which he serves as an officer. However,
 7 under Nevada law, even a grossly negligent breach of fiduciary duty does not give rise to liability:
 8 “NRS 78.138(7) applies to all claims of individual liability against directors and officers, precluding
 9 the imposition of liability for grossly negligent breaches of fiduciary duties.” *Chur v. Eighth*
 10 *Judicial District Court in and for County of Clark*, 136 Nev. 68, 69 (2020). There is no other way
 11 to allege a breach of fiduciary duty against Shuster, as “NRS 78.138 provides the sole mechanism
 12 to hold directors and officers individually liable for damages in Nevada.” *Id.* at 71.

13 Even assuming, *arguendo*, somewhere in the ACC the shotgun left enough factual
 14 allegations to cobble together a claim that Shuster owed a fiduciary duty to Counterclaimants that
 15 did not arise in the context of UI or UDI, bringing the claim outside of the reach of *Chur*, the claim
 16 still fails. In *Shoen v. SAC Holding Corp.*, 122 Nev. 621 (2006) – the case abrogated by *Chur*, *supra*
 17 – the court examined when a breach of fiduciary duty has occurred in the absence of the statutory
 18 bar. The *Shoen* court held that “directors and officers may only be found personally liable for
 19 breaching their fiduciary duty of loyalty if that breach involves intentional misconduct, fraud, or a
 20 knowing violation of the law.” Simply failing to act “as a reasonably careful person” does not rise
 21 to the level of triggering a breach of fiduciary duty claim. *Id.* at 640.

22 Finally, a breach of fiduciary duty claim requires an allegation that the breach caused
 23 damages. Counterclaimants use standard form language to claim damages – hardly the level of
 24 specificity required to claim breach of fiduciary duty. The sole damages allegations are that
 25 “Counterclaimants were harmed and Shuster’s conduct was a substantial factor in causing
 26 Counterclaimants’ harm,” ACC ¶ 88. And “As a direct and proximate result of Shuster’s actions,
 27 Counterclaimants have sustained damages in an amount to be proven at trial.” *Id.* ¶ 89. These vague
 28 allegations fail to rise to even the level required by FRCP 8, much less meet the particularity

1 required by FRCP 9. Thus, the Second Cause of Action fails and should be dismissed.

2 **F. The Third Cause of Action Fails Because There Can Be No Aiding and Abetting if**
 3 **There is No Fiduciary Duty**

4 Nevada has adopted Delaware’s standard for aiding and abetting breach of fiduciary duty.
 5 The pleading must allege four elements: “(1) a fiduciary relationship exists, (2) the fiduciary
 6 breached the fiduciary relationship, (3) the third party knowingly participated in the breach, and (4)
 7 the breach of the fiduciary relationship resulted in damages.” *In re Amerco Derivative Litigation*,
 8 127 Nev. 196, 225 (2011). Thus, this cause of action inherits all the defects of the Second Cause of
 9 Action (Breach of Fiduciary Duty) and cannot be maintained.

10 Additionally, the third element – that the third party knowingly participated in the breach –
 11 is pled as a legal conclusion rather than as facts supporting the legal conclusion. The entirety of the
 12 “aiding and abetting” appears to hinge on the barebones allegation that “Good, Gantner, Nexus and
 13 Gary knowingly and substantially assisted and/or encouraged Shuster to breach his fiduciary
 14 duty...” ACC ¶ 93. This does not state facts sufficient to support a claim under FRCP 8, let alone
 15 under FRCP 9.

16 Furthermore, the breach of fiduciary duty alleged is that “Shuster failed to act as reasonably
 17 careful person would have acted under the same or similar circumstances.” ¶ 87. There is no
 18 reported Nevada case recognizing a cause of action for ordinary negligence giving rise to breach of
 19 fiduciary duty. There is no reported Nevada case recognizing aiding and abetting negligence as a
 20 cause of action under Nevada law.

21 As to attorneys Gary Shuster and Ari Good, “aiding and abetting” negligence would
 22 presumably take the form of providing negligent legal advice. However, the attorneys owe their
 23 duty of care to the client, not an adverse third party. The proper way to seek compensation from
 24 these attorneys would be for the clients to bring a malpractice action seeking indemnity if and after
 25 the client is held liable for such claims. To hold otherwise would allow parties adverse to an
 26 attorney’s client to sue the attorneys for providing negligent advice to their client – an absurd result
 27 that would allow adverse parties to manufacture conflicts of interest in every attorney client
 28 relationship and chill the provision of legal advice. This result is prohibited by the Sixth

1 Amendment. Thus, the Third Cause of Action fails and should be dismissed.

2 **G. The Fourth Cause of Action Fails Because Civil Conspiracy is Not Pleaded With**
 3 **Specificity and is Prohibited by the Intracorporate Conspiracy Doctrine**

4 “Civil conspiracy is not an independent cause of action—it must arise from some underlying
 5 wrong.” *Suarez-Smith v. BAC Home Loans Servicing, LP* (D. Nev., Oct. 21, 2011, No. 2:11-CV-
 6 00201-GMN) 2011 WL 5025143, at *4; *accord Cork v. CC-Palo Alto, Inc.*, 534 F. Supp. 3d 1156,
 7 1189 (N.D. Cal. 2021), *Rockridge Trust v. Wells Fargo, N.A.*, 985 F. Supp. 2d 1110, 1156-57. (N.D.
 8 Cal 2013). Counterclaimants were required – but failed – to adequately plead the elements of the
 9 underlying fraud. For this reason alone, the Cause of Action for Civil Conspiracy fails.

10 Even assuming, *arguendo*, that fraud was pleaded with specificity, which Moving Parties
 11 dispute, if the object of the conspiracy involves fraud, the conspiracy claim must also meet the
 12 heightened pleading requirements of FRCP 9(b). This includes specifying the role of each defendant
 13 in the conspiracy and the fraudulent conduct alleged. *Wasco Prods. v. Southwall Techs., Inc.*, 435
 14 F.3d 989, 991-992 (9th Cir. 2006), *Gonzales v. Lloyds TSB Bank*, 532 F. Supp. 2d 1200, 1206 (C.D.
 15 Cal. 2006), *Rockridge Trust* at 1157.

16 Here, the ACC is far from specifying the role of each defendant in the conspiracy. While
 17 an argument may be made that Shuster’s role in the conspiracy is defined (although Moving Parties
 18 dispute that it is defined with the requisite specificity), the roles of the UI, UDI, Good, Gantner,
 19 Nexus and Gary are unclear. As far as Moving Parties can discern, the ACC attempts to set forth
 20 the roles of Counter-Defendants in paragraphs 58-69. However, none of these paragraphs (and as
 21 far as Moving Parties can tell, no other paragraphs in the ACC) detail the roles of UI and UDI in
 22 the alleged conspiracy.² The other Moving Parties will each be addressed separately below.

23 **1. Good’s Role in the Alleged Conspiracy is Not Alleged With Specificity**

24 The factual allegations related to the conspiracy and Good are almost entirely set forth in
 25 paragraphs 58 and 59 and are largely made on information and belief (*e.g.*, “On information and
 26 belief Good created, formed and operated a business structure... including setting up and
 27

28 ² Paragraph 68 alleges that “Uthervse, through Shuster, Good and Gantner circulated the UTHER tokens into the market...” However, it is unclear whether “Uthervse” refers to UI, UDI or UI Ltd. It is also unclear whether any of the actions alleged in paragraphs 68 or 69, amount to misconduct in furtherance of the alleged conspiracy.

transferring money to offshore accounts and corporations”, and “On information and belief, Good knowingly received funds fraudulently obtained from Counterclaimants”). ACC ¶ 58. Other allegations not made on information and belief appear to implicate Good in his role as an attorney (*e.g.*, by issuing cease and desist letters and “attempting to cancel the agreements without remitting the funds received by Counter-Defendants pursuant to those agreements”). ACC ¶ 59. In any case, specifically is sorely lacking– and entirely absent outside of Good’s legal work on behalf of his client. For example, what type of business structure did Good create, what offshore corporations did he transfer money to, and what agreements did he attempt to cancel? Such vague allegations fall well-short of the pleading requirements of FRCP 9(b).

2. Gantner’s Role in the Alleged Conspiracy is Not Alleged With Specificity

Similarly, many allegations against Gantner related to the alleged conspiracy are also made on information and belief and appear to be largely set forth in paragraph 61 of the ACC. For example, Counterclaimants allege that “On information and belief, Gantner created and developed a non-licensed platform that competed with the Utherverse platform – to illegally and fraudulently sell tokens and receive commissions” and “On information and belief, Gantner knowingly received funds fraudulently obtained from Counter-Defendants.” ACC ¶ 61. While, on the surface, some of the allegations (*e.g.*, allegations of intentional misrepresentation on the part of Gantner) may appear to have more “teeth” than some of the other allegations, missing is the required specificity of when, where, and how the representations were made, what is false or misleading about the representations, and why they are false. *See Vess v. Ciba-Geigy Corp. USA* at 1106, *Ebeid ex rel. U.S. v. Lungwitz* at 998. Thus, allegations against Gantner also fall well short of the specificity requirements of FRCP 9(b).

3. Nexus’ Role in the Alleged Conspiracy is Not Alleged With Specificity

As to Counter-Defendant Nexus, non-conclusory factual allegations are nearly non-existent. The ACC alleges only that “Nexus knowingly aided and conspired with Shuster to defraud, and conceal and withhold funds obtained from Counterclaimants,” and “Nexus was created, owned and operated by Gantner, who allowed Shuster to use Nexus to launder money...” ACC ¶ 63. The allegations against Nexus fail the specificity standard as well.

1 **4. Gary’s Role in the Alleged Conspiracy is Not Alleged With Specificity**

2 As to Counter-Defendant Gary, non-conclusory factual allegation related to the conspiracy
3 *are* non-existent. The ACC’s allegations of wrongdoing on the part of Gary are that he “knowingly
4 aided and conspired with Shuster to defraud, conceal and obtain and/or withhold funds from
5 Counterclaimants and investors” and that Shuster’s representations and misappropriations were
6 made with Gary’s support and approval. ACC ¶¶ 65, 66. These allegations (as well as those against
7 attorney, Good) are wholly insufficient, and violates the Sixth Amendment by allowing suit by a
8 third party for what the ACC appears to characterize as the provision of legal advice comprising a
9 pernicious conspiracy.³

10 Thus, none of the allegations against Good, Gantner, Nexus and Gary related to the alleged
11 conspiracy are pleaded with any level of specificity, let alone specificity sufficient to comply with
12 FRCP 9. Thus, for this additional reason, the conspiracy cause of action fails.

13 **5. The ACC Violates the Intracorporate Conspiracy Doctrine**

14 Additionally, under the intracorporate conspiracy doctrine, “claims against attorneys based
15 on conspiracies formed in the attorney-client context” are prohibited. *Evans v. Chichester School*
16 *Dist.*, 533 F.Supp.2d 523, 529 (E.D. Pa. 2008); *see also, Petricevic v. Shin*, No. CV 20-00283 LEK-
17 WRP) 2021 WL 2700382, at *7 (D. Hawaii, June 30, 2021) [no action for conspiracy may be
18 brought against attorneys acting within the scope of representing clients]. The doctrine applies to
19 any agent, whether the agent is an attorney or not, as “an agreement between or among agents of
20 the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy.”
21 *Ziglar v. Abbasi*, 582 U.S. 120, 153 (2017).

22 The ACC – in the first paragraph – alleges that Good and Gary are “attorneys”. ACC ¶ 1.
23 Nowhere is it alleged that they acted other than in their official capacities. Thus, an action for
24 conspiracy against Good and Gary cannot be maintained. Additionally, paragraph 27 expressly
25 admits that the conditions requiring application of the intracorporate conspiracy doctrine are met:
26 “each of the Counter-Defendants was ... the agent ... of each of the remaining Counter-
27

28 ³ Without specificity, we are left to make an educated guess as to what the ACC appears to rely on.

Defendants”. Counterclaimants allege, in essence, that all persons and entities involved were part of the same entity. This alone precludes allegations of conspiracy. Thus, the Fourth Cause of Action fails and should be dismissed.

H. The Second, Third and Fourth Causes of Action Also Fail Because Damages Alleged Were Suffered by Corporate Entities Requiring a Shareholder Derivative Action

A claim is derivative when the first-order injury is to the corporation. The Supreme Court has long held that a derivative action requirement applies “to those actions in which the right claimed by the shareholder is one the corporation itself could have enforced.” *Daily Income Fund, Inc. v. Fox*, 464 U.S. 523, 527–8 (1984). Nevada has adopted Delaware’s Tooley two-prong test for determining whether an action must be brought as a derivative one: “(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)”. *Parametric Sound Corporation v. Eighth Judicial District Court in and for County of Clark* 133 Nev. 417, 427 (2017). Where the answer to both prongs is “the corporation,” the claim is derivative. *Id.* Thus, under both federal and Nevada law, the Second, Third and Fourth Causes of Action must be prosecuted in the name of the corporation(s) allegedly harmed, as the real party in interest.

Federal Rule 17(a) requires that an action “be prosecuted in the name of the real party in interest.” When the claim belongs to the corporation, the corporation (or a properly aligned derivative plaintiff) must appear. The pleading is not verified, makes no pre-suit demand on the corporations, and pleads no particulars of demand futility, as required by Rule 23.1 and Nevada law. *Parametric, supra*.

I. The Fifth Cause of Action Fails Because the Terms of the Niya Note and How it Was Allegedly Breached Are Not Set Forth in the Complaint

The Fifth Cause of Action is a breach of contract claim against Shuster and Uthervse Digital, arising from an instrument termed the “Niya Note” ¶¶103–112. In essence, Niya alleges it loaned money (approximately \$1.35 million) to Uthervse via a promissory note, and that Shuster and UDI breached the Note by failing to repay it. Niya claims it has been harmed as a result ¶112.

Pursuant to Federal procedural law, “[a] pleading must contain a ‘short and plain statement

of the claim showing that the pleader is entitled to relief.” *Iqbal* at 677-78, quoting Fed. Rule Civ. Proc. 8(a)(2). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 678, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard... asks for more than a sheer possibility that a defendant acted unlawfully.” *Id.* Pleading facts that are ‘merely consistent with’ a defendant's liability, [] ‘stops short of the line between possibility and plausibility...” *Id.*, quoting *Twombly* at 557.

To state a claim for breach of contract under Nevada substantive law, a plaintiff must allege: “(1) the existence of a valid contract; (2) that plaintiff performed or was excused from performance; (3) that the defendant breached the contract; and (4) that the plaintiff sustained damages.” *Sierra Development Co. v. Chartwell Advisory Group, Ltd.*, 223 F.Supp.3d 1098, 1103 (D. Nev. 2016), *Patel v. Am. Nat’l Prop. & Cas. Co.*, 367 F.Supp.3d 1186, 1191 (2019).

In *Patel*, the plaintiff alleged that in January 2017, he contracted and paid for a homeowner's insurance policy with the defendant, and subsequently in March of 2017, a septic tank backed up and flooded his home. *Patel*, 367 F.Supp. at 1190. Plaintiff further alleged that he entered into a valid contract that required him to make regular payments and defendant breached the insurance contract by failing to pay his claims. *Id.* at 1192. Defendant moved to dismiss based on failure to state a claim for which relief could be granted. *Id.* at 1191.

In granting defendant’s motion to dismiss the breach of contract claim, the court indicated that “Plaintiff’s allegations fail to establish what terms of the contract were allegedly breached and the manner in which Defendant allegedly breached them. Without additional factual content, Plaintiff’s assertion that Defendant breached the contract because it did not pay Plaintiff’s claim is nothing more than a legal conclusion, and therefore insufficient under the relevant pleading standards.” *Patel*, 367 F.Supp.3d at 1192, citing *Iqbal* 556 U.S. at 678.

Here, the Fifth Cause of Action sets forth only a bare recitation of the elements of the breach of contract and is devoid of factual content. See ACC ¶¶ 103-112. Instead, what sparse

1 factual allegations are made with regard to the Niya Note are set forth in the “General
2 Background” section of the ACC, and are as follows:

3 On or about April 11, 2022, Shuster, on behalf of Utherville, executed a
4 senior secured convertible promissory note with Counterclaimants Momayez and
5 Niya Holdings (“Niya Note”). Pursuant to the Niya Note, Momayez, on behalf of
6 Niya Holdings, transferred \$1,350,000 to Utherville... Shuster, on behalf of
7 Utherville, agreed to repay Momayez and Niya Holdings pursuant to the terms of
8 the Niya Note, but now refuses to do so. Instead, Shuster has stolen the funds. ACC
9 ¶ 36.

10 A copy of the Niya Note is not attached, and the repayment terms are not set forth in the
11 ACC. There are no allegations as to whether payment was to be made in a lump sum or in
12 installments, when such payment(s) were due, and when and how Shuster and UDI breached the
13 Note. Additionally, the Counterclaim describes the Niya Note as a “senior secured convertible”
14 promissory note. If that is true, Niya presumably received collateral or a security interest to secure
15 the loan’s repayment. However, there is no allegation that it would be a breach of the Note to trigger
16 seizure of the collateral. There is also no indication of what conditions would trigger conversion and
17 into what the Note would or could be converted. By failing to address these and other terms, the
18 ACC leaves gaping holes in the facts surrounding the Niya Note.

19 Critically, Niya fails to plead that it suffered any uncompensated damages from the alleged
20 breach of the Niya Note. Niya cannot claim a money loss if it still holds valuable collateral or if it
21 could have mitigated its loss by exercising its rights against the security. The ACC states in generic
22 terms that “Niya Holdings was in fact harmed and suffered damages in an amount to be proven at
23 trial” as a result of the breach. (ACC ¶112), but it offers no detail as to what those damages are. If
24 the Niya Note was a straightforward loan of \$1.35 million, one would expect the damages to be at
25 least that principal amount (plus any accrued interest) remaining unpaid. Yet Niya does not state that
26 the \$1.35 million has not been repaid or that it is owed a specific sum. It simply says a breach
27 occurred and it was harmed. Such a bare allegation of damage is insufficient under *Iqbal* and is a
28 “formulaic recitation” with no factual substance. Niya must, at the very least, be required to plead
the amount unpaid on the note and how the breach caused its loss, so that the claim may be
understood well enough to respond to, and so that the Court can assess plausibility.

///

Moving Parties and the Court should not have to guess what the material terms of the NIYA Note were, which term(s) of the NIYA Note were breached, and how or whether Niya remains unpaid and unsecured on the Note. Because the Counterclaim does not set forth the basic information to state a claim for relief, the Fifth Cause of Action should be dismissed.

J. The Sixth Cause of Action Fails Because the Terms of the Blockchain Funding SAFT Allegedly Breached Are Not Set Forth in the Complaint

The Sixth Cause of Action is also a breach of contract claim against Shuster and UI Ltd., arising from an agreement termed the “Blockchain Funding SAFT”. ACC ¶¶ 113–122. As with all the breach of contract causes of action (Fifth through Ninth), the alleged agreement is not attached, and the basic terms are not set forth in the ACC.

Law applicable to the Fifth Cause of Action above is also applicable here (as well as to the Seventh through Ninth Causes of Action), and like the Fifth Cause of Action, the Sixth Cause of Action sets forth only a bare recitation of the elements of the breach of contract claim, devoid of the necessary factual content. *See* ACC ¶¶ 113-122.

The nominal allegations set forth in the General Background section that appear relevant to Sixth Cause of Action are as follows:

On May 10, 2022, Utherville, by and through Shuster, and Counterclaimant Blockchain Funding, by and through Denne, executed a simple agreement for future tokens (“SAFT”) whereby Blockchain Funding purchased 360,000,000 tokens at the then-price per token of \$0.000033334, for a total purchase amount of \$12,000.24 USD (“Blockchain Funding SAFT”). Blockchain Funding fulfilled its obligations and made payment to Utherville in accordance with the Blockchain Funding SAFT. However, Shuster never delivered tokens to Blockchain Funding or remitted Blockchain Funding’s payment for the tokens in accordance with the Blockchain Funding SAFT. Shuster now takes the position that Blockchain Funding does not own any tokens whatsoever. Instead, Shuster has stolen the funds. ACC ¶ 37.

The Counterclaim is devoid of any factual allegations as to when tokens were to be delivered, under what conditions, if any, delivery of tokens may have been excused, or under what conditions payment was to be remitted. Further, no allegations are made as to how Shuster or UI Ltd. breached the Blockchain Funding SAFT.

In fact, the Counterclaim alleges that only Blockchain Funding and UI Ltd. are parties to the Blockchain Funding SAFT (ACC ¶ 114) but then goes on to state that “Blockchain Funding,

Shuster, and Uthervse International ltd. are mutually obligated to perform under the Blockchain Funding SAFT” with no indication of how or why Shuster is so obligated. *See* ACC ¶¶ 114-15. As no allegation of a personal guaranty is made, the ACC likely relies on an alter ego theory to hold Shuster personally liable for the corporate debt.⁴ While Nevada does allow alter ego liability in appropriate cases, it is an extraordinary remedy with specific requirements, namely unity of interest and fraudulent use of the corporate form. *North Arlington Medical Bldg., Inc. v. Sanchez Constr. Co.*, 86 Nev. 515, 520 (1970). As with other forms of fraud, pleading of alter ego requires specificity pursuant to FRCP 9(b). Yet, Moving Parties are unable to identify specific allegations of fact that, if true, would establish such fraudulent use.

For these reasons, the Sixth Cause of Action for breach of the Blockchain Funding SAFT should be dismissed with prejudice.

K. The Seventh Cause of Action for Breach of the Masternode SAFT Fails for the Same Reasons That the Sixth Cause of Action Fails

The allegations in the ACC as to the Masternode SAFT are almost identical to the allegations related to the Blockchain SAFT. The cause of action names Shuster and UI Ltd. and alleges that Masternode and UI Ltd. are parties to the Masternode SAFT (ACC ¶ 124) but that Masternode, Shuster and UI Ltd. are mutually obligated to perform under the agreement (*Id.* ¶ 125). There is no explanation as to why Shuster is obligated.

The salient allegations in the General Background section that appear relevant here are:

On May 10, 2022, Uthervse, by and through Shuster, and Counterclaimant Masternode, by and through Denne, executed a SAFT whereby Masternode purchased 150,000,000 tokens at the then-price per token of \$0.000033334, for a total purchase amount of \$5,000.01 USD (“Masternode SAFT”). Masternode fulfilled its obligations and made payment to Uthervse in accordance with the Masternode SAFT. However, Shuster never delivered tokens to Blockchain or remitted Blockchain’s payment for the tokens in accordance with the SAFT. Shuster now takes the position that Masternode does not own any tokens whatsoever. Therefore, on information and belief, Counterclaimants allege that Shuster and Uthervse never intended to fulfill their obligations under the Masternode SAFT and instead intended to defraud Masternode of the money paid

⁴ An alter ego theory is asserted generally with regard to Shuster and UI Ltd. at paragraph 72 but likewise is devoid of any factual basis.

1 in reliance on the Masternode SAFT. ACC ¶ 38

2 Again, the ACC is devoid of any factual allegations as to when tokens were to be delivered,
3 under what conditions the delivery of tokens may have been excused, if any, or under what
4 conditions payment was to be remitted. No allegations are made as to how Shuster or UI Ltd.
5 breached the Blockchain Funding SAFT. Further, Moving Parties cannot identify specific
6 allegations that, if true, would establish unity of interest or fraudulent use of the corporate form.

7 Thus, the Seventh Cause of Action for Breach of the Masternode SAFT fails and should be
8 dismissed with prejudice.

9 **L. The Eighth Cause of Action Fails Because the Terms of the Blockchain Funding Note**
10 **and How it Was Breached Are Not Alleged**

11 The Eighth Cause of Action is for breach of contract against Shuster and UDI. The
12 Counterclaim alleges that Blockchain Funding, Shuster, and UDI are parties and mutually obligated
13 to perform under the Blockchain Funding Note, and that Shuster and UDI “breached the material
14 terms of the Blockchain Funding Note by failing to perform under its terms.” (ACC ¶¶ 134-137.)

15 In the General Background section, the ACC alleges only that:

16 On or about June 5, 2023, Blockchain Funding, by and through Denne,
17 loaned to Uthervse a total of \$350,000.00, evidenced by a promissory note
18 (“Blockchain Funding Note”) executed by Uthervse, by and through Shuster. To
19 secure the Blockchain Funding Note, Uthervse, by and through Shuster, executed
20 a stock pledge agreement (“Stock Pledge Agreement”), which memorialized the
21 Blockchain Funding Note and pledged 2,800,000 shares of Uthervse Inc. Class A
22 Common Stock to Blockchain Funding. Blockchain Funding fulfilled its
23 obligations and provided \$350,000.00 to Uthervse in accordance therewith; and
24 Blockchain Funding understood that ownership of the shares had been transferred
25 accordingly. However, the proceeds from the Blockchain Funding Note have not
26 been returned, and Shuster now takes the position that Blockchain Funding does
27 not own any shares whatsoever. Therefore, on information and belief,
28 Counterclaimants allege that Shuster and Uthervse never intended to transfer the
shares, but instead intended to defraud Blockchain Funding of the \$350,000.00.
ACC ¶ 39.

24 Conspicuously absent are factual allegations regarding when payment(s) were due, and
25 when and how Shuster and UDI breached the Note. Moreover, and with regard to the Stock Pledge
26 Agreement, the ACC alleges that pursuant to the Stock Pledge Agreement, shares of UI stock were
27 pledged (presumably as collateral to secure the Blockchain Funding Note), that Blockchain Funding
28 understood the ownership of the shares had been transferred accordingly (not that the shares *had*

1 transferred but only that Blockchain *understood* them to be transferred) but stops short of asserting
 2 a cause of action for breach of the Stock Pledge Agreement. Further, the ACC states in generic
 3 terms that because of Shuster and UDI's breach, "Blockchain Funding was in fact harmed and
 4 suffered damages in an amount to be proven at trial" but blatantly omits facts as to whether any
 5 portion of the \$350,000 allegedly provided to UDI was even due.

6 The facts alleged are insufficient to permit a response and the cause of action is not plausible
 7 on its face. Thus, the Eighth Cause of Action should be dismissed with prejudice.

8 **M. The Ninth Cause of Action Fails Because the Complaint Does Not Provide Facts**
 9 **Sufficient to Determine Even What Agreement is at Issue**

10 The term "exit agreement" is vaguely defined in paragraph 52 as follows:
 11 "Counterclaimants Quinn and Denne sought to wind down their relationship with Shuster and
 12 Uthervse on mutually beneficial terms through an exit agreement." The only description of the
 13 terms of that alleged agreement is found in paragraph 53, which discloses that there is a "detailed
 14 exit strategy for Counterclaimants in the Exit Agreement, including sale of tokens and distribution
 15 of funds therefrom..." ACC ¶ 52.

16 The entirety of the cause of action rests on an alleged "Exit Agreement" that is pled as
 17 providing for an undefined "exit strategy" comprising "sale of tokens and distribution of funds
 18 therefrom", without specifics as to which tokens, how many, and to whom they were to be sold,
 19 how the funds would be distributed, or to whom. The term "Exit Agreement" next appears in
 20 paragraph 144-152, where it is alleged that the "Exit Agreement" was breached and harm resulted.
 21 Moving Parties cannot determine whether the contract even exists, and if it does, what its terms are.

22 "Litigation is not a guessing game." *Riggins v. Polk County Procurement Dept.*, No. 8:12-
 23 CV-1755-T-17TBM, 2013 WL 5304056, at *3 (M.D. Fla., Sept. 20, 2013). The "pleading standard
 24 Rule 8 announces does not require detailed factual allegations, but it demands more than an
 25 unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal* at 678 (internal punctuation
 26 omitted).

27 The Ninth Cause of Action is precisely the kind of "unadorned, the-defendant-unlawfully-
 28 harmed-me accusation" that *Iqbal* forbids, and should be dismissed with prejudice.

N. Reservation of Right to Contest Personal Jurisdiction

Counterclaimants have sued multiple out-of-state and foreign defendants – including a British Columbia corporation (UDI), a Canadian resident (Gary), a Colombian resident (Good), an Arizona LLC (Nexus), and an Arizona resident (Gantner) (collectively “Foreign Jurisdiction Parties”) – none of whom reside in Nevada. Each of the Foreign Jurisdiction Parties lack sufficient contacts with this forum to be subject to personal jurisdiction. Foreign Jurisdiction Parties thus maintain that this Court cannot exercise personal jurisdiction over them. Because this motion is Foreign Jurisdiction Parties’ first response to the counterclaims, Foreign Jurisdiction Parties raises their objection to personal jurisdiction now, in order to avoid any waiver of that defense. Under the Federal Rules, a defendant waives any lack-of-personal-jurisdiction defense by failing to assert it in the first Rule 12 motion or responsive pleading. *Moser v. Benefytt, Inc.*, 8 F.4th 872, 877 (9th Cir. 2021); Fed. R. Civ. P. 12(h)(1). Accordingly, Foreign Jurisdiction Parties hereby asserts their personal jurisdiction defense at this earliest opportunity and expressly preserve their objection to personal jurisdiction. The perfunctory and insufficient allegations in the ACC do not support a finding of personal jurisdiction over any of the Foreign Jurisdiction Parties, and the ACC should be dismissed as to those parties.

Foreign Jurisdiction Parties appear specially and only for the limited purpose of contesting the ACC’s sufficiency and reserve the right to challenge this Court’s personal jurisdiction. This reservation is consistent with the principle that personal jurisdiction is an individual due process right that a party can insist upon or waive by its litigation conduct. *See International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316 (1945). Here, Foreign Jurisdiction Parties have not submitted to jurisdiction; on the contrary, they have timely invoked the defense at the first opportunity. Nothing in this motion should therefore be construed as a consent to personal jurisdiction in Nevada. By asserting an objection to personal jurisdiction now, Foreign Jurisdiction Parties ensure that their lack-of-jurisdiction defense is fully preserved without waiver, even as the Court considers the merits of Moving Parties’ Rule 12(b)(6) motion. This approach – raising all available defenses initially – is not only procedurally required by Rule 12 but also a prudent practice endorsed by courts in this Circuit and beyond. Accordingly,

Foreign Jurisdiction Parties respectfully reserve their personal jurisdiction objection for the Court's later determination if denied at this stage, while proceeding with the instant Rule 12(b)(6) motion.

CONCLUSION

For the foregoing reasons, all nine causes of action fail to state a claim on which relief may be granted. Moving Parties respectfully request that the ACC be dismissed with prejudice.

Dated: May 30, 2025

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